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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**

8 STEPHEN ANTHONY HAAG,

9 *Petitioner,*

10 vs.

11 BAKER, *et al.*,

12 *Respondents.*  
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3:17-cv-00028-HDM-WGC

ORDER

15 This habeas matter under 28 U.S.C. § 2254 comes before the Court on petitioner's  
16 application (ECF No. 1) to proceed *in forma pauperis*, his motion (ECF No. 3) for a status  
17 check, and for initial review under Rule 4 of the Rules Governing Section 2254 Cases.

18 Petitioner has not properly commenced the action by submitting a pauper application  
19 on the required form with all required attachments.

20 Petitioner did not use the correct pauper application form. Under Local Rule LSR 1-1,  
21 a litigant seeking to proceed *in forma pauperis* must apply on the Court's required pauper  
22 form. Petitioner instead used a purported form for appealing a federal district court order to  
23 a federal court of appeals. This action is not such an appeal.

24 Moreover, petitioner did not submit the financial attachments that are required to be  
25 submitted with the form. Under 28 U.S.C. § 1915(a)(2) and Local Rule LSR1-2, a petitioner  
26 must attach both a properly executed financial certificate and an inmate account statement  
27 for the past six months. Petitioner attached neither, and the financial materials that he did  
28 submit are not the correct materials.

1 It does not appear that a dismissal of the current improperly-commenced action without  
2 prejudice would materially impact the analysis of either a substantial successive petition issue  
3 and/or the application of the limitation period in a promptly filed new action or otherwise cause  
4 substantial prejudice.<sup>1</sup>

5 This improperly-commenced action therefore will be dismissed without prejudice.<sup>2</sup>  
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8 <sup>1</sup>The records in petitioner's prior actions in this Court and/or the online docket records of the state  
courts and of the Ninth Circuit Court of Appeals reflect the following.

9 Petitioner challenged his custody under the same judgment of conviction in No. CR03-1520 in the  
10 state district court previously in this Court in No. 3:07-cv-00132-RCJ-RAM. This Court denied that petition on  
the merits by an order and final judgment entered on March 8, 2010; and the Court of Appeals denied a  
11 certificate of appealability in No. 10-15586. Thereafter, the Court dismissed petitioner's second federal  
petition in No. 3:12-cv-00594-MMD-WGC as successive. The Court of Appeals thereafter denied petitioner's  
12 application for authorization to file a second or successive petition in No. 13-71882 in that court. Petitioner  
acknowledges in the current petition that he has not sought and obtained authorization from the Court of  
13 Appeals to file the present petition. Review of online dockets confirms that: (a) there has been no intervening  
amended or corrected judgment of conviction in the state district court; and (b) the Ninth Circuit has not  
14 granted petitioner authorization to file a second or successive petition. Litigation of the substantial successive  
petition issue thereby presented will not be materially impacted by a dismissal of the current improperly-  
15 commenced action without prejudice. To the extent that petitioner relies upon alleged actual innocence to  
overcome procedural bars, he must present such an argument to the Court of Appeals in the first instance in  
16 order to seek to pursue a successive federal petition. See 28 U.S.C. § 2244(b)(2)(B) & (3)(C).

17 With regard to timeliness, petitioner did not appeal the November 20, 2003, judgment of conviction in  
No. CR03-1520, and the time to do so expired on Monday, December 22, 2003. On November 19, 2004,  
18 after 332 days had elapsed, petitioner filed a timely state post-conviction petition. Proceedings on that  
petition were pending through the issuance of the remittitur in No. 47924 in the state supreme court on March  
19 27, 2007. Absent tolling or delayed accrual, the one-year federal limitation period expired after another 33  
days elapsed, on Monday, April 30, 2007. Petitioner's state court filings thereafter could not statutorily toll a  
20 federal limitation period that already had expired. Petitioner's three subsequent state petitions that reached  
the state appellate courts in any event all were denied as untimely and successive, in Nos. 57296, 60277 and  
21 69768 in the state appellate courts. Thus, on the face of the state and federal records, the one-year federal  
limitation period putatively expired nearly a decade before this third federal petition was filed. In this regard,  
22 petitioner did not allege recent discovery of the alleged exculpatory evidence upon which he bases his claim  
of actual innocence, as he alleges that he still does not have the DNA lab evidence. In this regard, the  
23 Nevada Court of Appeals noted in its December 28, 2016, order of affirmance in No. 69768 that petitioner  
had raised the same claim of actual innocence in prior state court proceedings in 2012. See *Haag v.*  
24 *Nevada*, No. 69768, 2016 WL 7635433, slip op. at \*2 (Nev. Ct. App., Dec. 28, 2016). Moreover, delayed  
accrual based upon any alleged late discovery aside, an actual showing of actual factual innocence would  
25 override the limitation period without regard to filing date. Accordingly, litigation in a promptly-filed new action  
of the timeliness issue presented by the foregoing writ history would not be materially impacted by a dismissal  
26 without prejudice of the present action; and that timeliness issue in all events could be reached only if  
petitioner overcame the substantial successive petition issue that would be presented in the first instance.  
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28 <sup>2</sup>The dismissal on the grounds stated does not imply that the papers presented are free of other  
deficiencies. *Inter alia*, petitioner did not sign the petition. He signed the verification but not the petition itself,  
and he must sign both.

1 The motion for status check will be denied for failure to follow Local Rule LR IA 7-1,  
2 which permits a party to inquire by letter, not motion, ninety days after a matter has been, or  
3 should have been submitted.

4 IT THEREFORE IS ORDERED that the application (ECF No. 1) to proceed *in forma*  
5 *pauperis* is DENIED and that this action shall be DISMISSED without prejudice.

6 IT FURTHER IS ORDERED that petitioner's motion (ECF No. 3) for a status check is  
7 DENIED for failure to follow Local Rule LR IA 7-1.

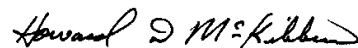
8 IT FURTHER IS ORDERED that a certificate of appealability is denied. Jurists of  
9 reason would not find debatable whether the Court was correct in its dismissal of the action  
10 without prejudice on procedural grounds, for the reasons discussed herein.

11 IT FURTHER IS ORDERED, pursuant to Rule 4 of the Rules Governing Section 2254  
12 Cases, that the Clerk shall make informal electronic service upon respondents by adding  
13 Nevada Attorney General Adam P. Laxalt as counsel for respondents and directing a notice  
14 of electronic filing of this order to his office. No response is required from respondents other  
15 than to respond to any orders of a reviewing court.

16 The Clerk of Court shall send petitioner a copy of his papers in this action, along with  
17 copies of the forms and instructions for an inmate pauper application and habeas petition.

18 The Clerk of Court shall enter final judgment accordingly, dismissing this action without  
19 prejudice.

20 DATED: October 19, 2017.

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25 HOWARD D. MCKIBBEN  
26 United States District Judge  
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